UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

S&L VITAMINS, INC.,

Plaintiff/Counterclaim Defendant,

- against -

AUSTRALIAN GOLD, INC.,

Defendant/Counterclaim Plaintiff.

AUSTRALIAN GOLD, INC.,

Third-Party Plaintiff,

- against -

LARRY SAGARIN AND JOHN DOES 1-10,

Third-Party Defendants.

DEPOSITION OF LARRY SAGARIN

New York, New York

Thursday, March 30, 2006

Reported by:
MICHELE ROSSI, RPR

Dockets.Justia.com

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March 30, 2006
9:00 a.m.

DEPOSITION of LARRY SAGARIN, held at the offices of MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO, P.C., 666 Third Avenue, New York, New York 10017 before Michele Rossi, a Registered Professional Reporter and Notary Public within and for the State of New York.

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IT IS HEREBY STIPULATED AND AGREED by and among counsel for the respective parties hereto that the sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except to the form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

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LARRY SAGARIN,
stating his residence as 81 Lyn Lane, Baiting Hollow, New York 11933, having been duly sworn by the Notary Public (Michele Rossi, RPR), was examined and testified as follows:

EXAMINATION BY MR. MATTHEWS:

Q Would you please state your name for the record.
A My legal name is Lawrence Thomas Sagarin. I prefer to be called Larry.
Q Mr. Sagarin, what is your home address?
A 81 Lyn lane, Baiting Hollow, New York 11933.
Q How long have you lived there?
A 5 years.
Q And your wife's name?
A Laura Fanning.
Q She resides with you?
A That's correct.
Q How long have you been married?
A 10 years, 2 weeks ago.
Q What is her occupation?
A Teacher.

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Q What's her involvement with S&L Vitamins, Inc.?
A I think she's on the paperwork. Involvement, none.
Q When you say on the paperwork, you're referring to being an owner --
A Correct.
Q -- from a legal perspective?
A Correct.
Q Does she have any responsibilities with respect to the operation of S&L Vitamins?
A None whatsoever.
Q Has she ever been to your places of business?
A When you say, places --
Q Well, I understand from other deposition testimony that you have -- I'll break it up.
Has she ever been to the Montauk store?
A Montauk Highway store, yes, she did that.
Q How many times?
A Once that I can remember, if that. I don't even -- very few.
Q Does S&L Vitamins hold any corporate

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meetings, shareholder meetings, board of director meetings, things of that nature?
A No.
Q Why is Laura Fanning listed as an owner of S&L Vitamins?
A She's an investor.
Q What does that mean?
A She invested the money to start up the business.
Q You were married at the time S&L Vitamins was formed; is that correct?
A That is correct.
Q Did she have funds separate from you to start up S&L Vitamins?
A That is correct.
Q What were the source of those funds?
A Malpractice lawsuit. Her mother died due to a misdiagnosis of breast cancer. It went to her brain and she died. And her father also fell down an elevator shaft. Both malpractice and --
Q That's horrible.
A Horrible. When she was 17 years old.
Q Did you contribute any money to start

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S&L Vitamins?
A No.
Q What was the amount of Laura Fanning's contribution to S&L Vitamins?
A $15,000.
Q Was there ever any intention of her being involved in the operation of that business?
A She had no desire to be involved in the operation of that business.
Q What's your mother's name?
A Helen Sagarin.
Q Do you have a business that you operate independently from S&L Vitamins with your mother?
A I have a business that my mother owns that I help her operate separate from S&L Vitamins.
Q What is the name of that business?
A Body Source.
Q What is the legal name of that business?
A I don't know.
Q Would it be Body Source Limited?
A It could be. I don't know.
Q Who would know?
A Helen Sagarin.

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Q Where is that Body Source store located?
A 159-6 Route 25A, Miller Place, New York.
Q Throughout this deposition, I will try to clarify which store I'm talking about --
A Absolutely.
Q -- if that makes a difference. Let me know if you're unclear with my question.
A I will, absolutely.
MR. COLEMAN: You got to please always let him finish his question before you answer.
Q Before I get too far into this, let me give you just a couple of preliminary statements. Have you ever been deposed before?
A Yes.
Q Then you know the drill, but let me finish my question. If you do not understand a question I ask, please ask me to rephrase it. Okay?
A Yes.
Q And you've done a good job so far by answering yes, no or giving an answer rather than shrugging your shoulders, so continue to do that.
Are you on any medication that would

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affect your memory?
A No. Excuse me, affect my memory?
Q Yes.
A I'm on no medication whatsoever.
Q You understand you're here today under oath?
A Yes.
Q When was the Body Source in Miller Place opened?
A 1996 October. I know because we are renegotiating the 10-year lease now and it's coming due in October.
Q Was it at the Miller Place address that it currently has then, I take it, from these last 10 years, it's not been in any other location?
A I don't understand the question.
Q All right. Has the Miller Place Body Source store ever been at another location, other than the 159-6 address?
A In the town of Miller Place?
Q Yes.
A No. It has been at that address.
Q Have there been any other Body Source stores besides the one on Montauk Highway in

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Miller Place?
A Yes.
Q What is the address and location of that store?
A They are currently closed. I will try to remember the address, to the best of my ability, 83 West Main Street, Smithtown. 2090 Jericho Turnpike, East Northport, New York.
Q That's good enough. So there was a Smithtown store and there is a Miller Place store and there is a Montauk store, as well?
A It's Lindenhurst, but, yes.
Q Forgive me for my --
A Montauk is another town. I don't want to confuse anybody.
Q I haven't completed my local geography.
A It's a fishing area, if you're ever out here in the summer.
MR. COLEMAN: I told you not to volunteer any information, Larry.
Q The Miller Place and the Smithtown stores were under the same ownership, that is your mother's ownership, correct?
A Yes.

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Q And the Lindenhurst store is owned by Steven Mercadante and Laura Fanning?
A That is correct.
Q What's your father's name?
A Joseph Samuel Sagarin.
Q Is he involved with the business called Drills and Taps?
A No.
Q What is the nature of his business?
A He's a tool distributor.
Q Where at?
A He just moved from 204A to 59 Cleveland Avenue in the same town.
Q What town is that?
A Bay Shore, New York.
Q What's the name of his company?
A SAG Supply Corp.
Q Do you have any ownership in that company?
A No, I do not.
Q What about DRILLSANDTAPS.COM, are you familiar with that website?
A Yes, I am.
Q What is that?

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A We sell drill bits and assorted metal cutting tools to end users and whoever wants to purchase them on the Internet.
Q When you say we, is that S&L Vitamins?
A S&L Vitamins, yes, sir.
Q Is there a separate corporate entity for DRILLSANDTAPS.COM?
A No, there is not. In S&L Vitamins, no, there is not.
Q Other than the Internet, is there a storefront or retail location for Drills and Taps?
A No, there is not.
Q Is your father the tool distributor from which you obtain the products, I presume?
A No, he is not.
Q Does he have any involvement with Drills and Taps?
A No, he does not.
Q I put in front of you what was marked as Exhibit 6 in Steve Mercadante's deposition. And for the record, unless otherwise noted, most of your exhibits are going to be from his deposition.

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Is this a page from the DRILLSANDTAPS.COM website?
A It appears to be, yes.
Q And that 204A North Fehr Way in Bay Shore, is that your father's address?
A At one time, it was.
Q Why is that address listed there in the website?
A Because initially me and my father were going to be partners on the venture and realized that our relationship was better off not being business. It was better being personal, so it is a typo that's on there now. It is not correct.
Q Does S&L Vitamins, Inc. own any real estate?
A No.
Q It leases the Lindenhurst property?
A It pays rent, yes.
Q Would you tell me what the sources of revenue are for S&L Vitamins, Inc. by maybe product line? And let me tell you what, you have Internet sales, correct?
A Yes.
Q And you have a retail store in

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Lindenhurst, right?
A Yes.
Q You also sell, you have another website Drills and Taps where presumably that produces revenue as well, correct?
A Correct.
Q Is there any other revenue stream that I have not listed?
A We do ship -- it's generally from the Internet. No.
Q Were you going to talk about maybe shipping some products overseas?
A Well, customer inquiries, the sale isn't necessarily generated on the Internet. It could generate through a phone call.
Q Where did you go to high school?
A Smithtown High School East and St. Thomas Moore Boys Academy, Norwich, Connecticut.
Q Where did you graduate from?
A Norwich, Connecticut.
Q What year?
A '89.
Q Did you go to college?
A Very little.

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Q Where did you go?
A Suffolk Community College.
Q What years?
A Accurately, I don't know. '93, '92. '93, somewhere in there.
Q How many credits did you take?
A Very few. I might have generated 30 credits.
Q And you did not earn a 2-year degree or anything?
A No, sir.
Q Since graduation from high school, tell me about your work history.
A After graduating high school, I moved to Miami. I worked at a company called DeWitt Tool Corporation. I believe they've changed their name currently to Drill America, but when I worked there, it was called DeWitt Tool.
Q That was in Florida?
A Miami, Florida. I worked there for approximately 2-1/2, 3 years. I came back to New York to work for my father at SAG Supply Corp. It is currently at 1 South Second Street in Deer Park, New York.

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And then I opened -- I helped my mother open the Body Source, I believe. That's what happened. In --
Q In '96?
A -- '94.
Q You mentioned something about having a 10-year lease at Miller Place?
A That's the Miller Place location, the 2090 East Northport store is an older location. It's just closed now.
Q That was the Smithtown?
A No, that was East Northport.
Q Oh, East Northport?
A Yes.
Q So there were 4 years?
A I don't mean to confuse you.
Q I thought I'd be just crystal clear at this deposition, and I missed one.
A The original store opened was the 2090 Jericho Turnpike. That was the first store to open in 1994. 2 years later, the Miller Place store opened. A few years later, Smithtown opened and closed.
A few years later, Lindenhurst opened

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and currently opened or approximately around -- no, we opened in '98, I believe.
Q What was the reason for closing 2090 Jericho Turnpike?
A Lack of revenue.
Q Had Helen Sagarin been in business for herself before opening Body Source in 1994?
A Not that I'm aware of, no.
Q What did you do for DeWitt Tool?
A I started in shipping and worked my way to sales.
Q What did you do for SAG Supply Corporation?
A Sales.
Q Why did you leave SAG Supply Corporation?
A '94, I guess, when I opened --
Q But why?
A Oh, why. My father and I had some disagreements.
Q I guess from looking at you that it would be safe to say that you've been at a gym before and worked out. And I think we had some testimony from Mr. Mercadante.

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Are you a body builder?
A Not currently, no.
Q Were you?
A At one point in my life, yes, I was.
Q Did you actually compete?
A Yes.
Q When was that? How long ago was that?
A '93 to '96.
Q Was that what led to your mother opening the Body Source you, your involvement in body building?
A Absolutely. It played a big impact on it, absolutely.
Q How so?
A The quantity of supplements that I was consuming and the quantity of money that I was spending on the supplements that I was consuming. And the efforts that I went through to purchase the products.
Q Why did you not take an ownership in that company?
A No money.
Q Well, before you started the Body Source, what was your title?

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A I don't remember.
Q What did you do for the company?
A Everything. Took out the garbage, swept the floor, vacuumed the floor, helped customers, ordered products, everything.
Q Who was responsible for the finances of the company at that time?
A Helen Sagarin.
Q Has that changed from '94 to today?
A No.
Q So the business person of Body Source, your mother's company, is Helen Sagarin?
A That's correct.
Q Is your role expanded since 1994 with that Body Source entity?
A No.
Q Do you hold a title now in that company?
A No.
Q Are you an officer?
A No.
Q Do you have authority to enter into contracts on behalf of that company?
A Define authority.
Q Are you allowed to sign a contract?

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A No.
Q Are you allowed to write checks for Body Source, your mother's company?
A No.
Q Are you permitted to order products?
A Absolutely. It doesn't happen that often, but yes.
Q Helen Sagarin is primarily responsible for ordering products for her Body Source store?
A That is correct.
Q Does that Body Source sell tanning lotions?
A I believe it does have a small shelf with tanning lotions on it, yes.
Q Are those obtained from S&L Vitamins, Inc.
A That is correct.
Q Are they purchased by Helen Sagarin's Body Source store, where actually cash or some payment changes hands?
A Yes.
Q Are those transactions documented?
A Not that I'm aware of.
Q How does Helen Sagarin's company pay for

those tanning lotions?
A Check or supplements or trade.
Q Does Helen Sagarin's Body Source have its own checking account?
A Of course.
Q Is that checking account the same as S&L Vitamins' checking account?
A Absolutely not.
Q Does Helen Sagarin's Body Source sell any products on the Internet?
A No, they do not.
Q Does Helen Sagarin's Body Source received any revenues from products sold by S&L Vitamins on the Internet?
A Absolutely not.
Q Are you paid a salary by Body Source, Helen Sagarin's store?
A Yes.
Q What is your salary?
A $48,000 annually.
Q Do you receive a bonus?
A No, I do not. I receive a car.
Q Who do you receive the car from?
A I don't understand. Ford.

Q Is that from Helen Sagarin's company, that you receive the car?
A Yes.
Q What kind of car is that?
A Ford Mercury.
Q Do you receive any other fringe benefits from Helen Sagarin's company, health insurance?
A Health insurance.
Q Do you receive any compensation from S&L Vitamins's, Inc.?
A Compensation, I receive a car.
Q What kind of car do you receive from S&L?
A GMC Yukon.
Q Do you receive insurance for that car as well?
A No. I pay that out of my own pocket.
Q Do you receive any distributions from S&L Vitamins, Inc.?
A No.
Q Cash distributions?
A No.
Q Who is responsible for the financial aspect of S&L Vitamins, Inc.?

A Steven Mercadante.
Q Who is S&L Vitamins's accountant?
A Some guy, Andrew.
Q Andrew Daniels?
A Rings a bell.
Q It hasn't changed recently?
A No, sir.
Q Are you an investor in any other businesses -- actually, I don't think you've testified in any business. To save Mr. Coleman from objecting, have you invested in any business?
A No. Financial investment, is that what you're speaking about?
Q No, I'm not talking about holding corporate stock. I'm talking about having an ownership interest in any business.
A I do not have any ownership business in any company at all.
Q And you don't work for any other company except for Helen Sagarin's Body Source and S&L Vitamins, Inc.?
A Define work.
Q I'm just trying to understand what you

do for a living and what you do with your day and I understand from other depositions that you've been working with Helen Sagarin's company?
A Yes.
Q You've also worked for S&L Vitamins?
A Yes.
Q I was just trying to see if there was any other company that you might help them out with, whether it be sales or purchasing?
A And receive compensation for?
Q No?
A I've been known to fill in at my father's shop for free on occasion, help him on Saturday unload a truck if he needs help. No compensation, but that's it.
Q Other than that, nothing?
A No.
Q You said you've been deposed before. How many times?
A Once.
Q Was that in a lawsuit involving S&L Vitamins?
A Yes.
Q Was that the California Tan lawsuit?

A Yes.
Q How many lawsuits has S&L Vitamins been involved in?
A Three.
Q That would be the lawsuit with Australian Gold, California Tan and then Designer Skin; is that correct?
A That is correct.
Q Have you ever been a party to a lawsuit individually?
A Yes. Excuse me, define individually. I was named individually in the California Tan case. That's what I'm referring to.
Q Other than the California Tan case and other than the Australian Gold case --
A And Designer Skin.
Q -- and Designer Skin, have you ever been a defendant in a lawsuit?
A No.
Q Do you have a judgment against you resulting from some kind of charge at St. John's Episcopal Hospital?
A Obviously you know that. I don't know that.

Q I just want to remind you --
A You want me to pay the bill?
Q Not my thing. I just --
A I don't know if I do. If I do, you're more aware of it than I am.
Q Well, that's all I know. It shows up on your record that there's a judgment, which would suggest to me that there was some kind of a lawsuit that they have a judgment.
They probably would have to sue you first to get that judgment, so that's why I was asking.
A First I've heard of it.
Q I think it was '96 or '97?
A My daughter was born.
Q Was she born there?
A Absolutely.
Q That probably explains it.
A They were paid, but that doesn't matter.
Q Have you ever been charged with a felony?
A Yes.
Q Tell me about that.
A No.

MR. COLEMAN: He's not going to testify about that.
Q Why not?
A I don't want to.
MR. COLEMAN: No, that's besides the point. It's not going to lead to the admission, to the discovery of admissible evidence.
MR. MATTHEWS: Absolutely, Ron, it is. It goes to the witness's -- I have a right to investigate what it is. It's not privileged.
MR. COLEMAN: Well, he will testify that there's it was not a charge involving moral turpitude and that will be the entire extent of his testimony.
If the judge orders otherwise, then we'll have him back, but beyond that, there's no reason for his testimony.
MR. MATTHEWS: Let me ask the questions first and then you can lodge your objections.
Q Were you convicted of a felony?
A Yes.
Q What year was your conviction?
A '97. I believe, '96, '97.

Q Did you serve any jail time?
A No.
Q Are you still on probation?
A No.
Q Were you on probation?
A Yes.
Q For how long?
A 10 years.
Q When did your probation end?
A August 30, 2005. August 29 for 9 years.
Q Will you tell me what the charges were against you?
A I don't know.
Q Does it involve the sale of or allegations of selling drugs?
MR. COLEMAN: Object to the form.
A No.
RL* Q Did the charges have anything to do with possession or distribution of drugs or illegal substances?
MR. COLEMAN: Don't answer.
MR. MATTHEWS: You're instructing him not to answer?
THE WITNESS: I don't understand why

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you're asking me those questions.

MR. COLEMAN: Larry, don't argue with him.

MR. MATTHEWS: I have a right to know. You can answer them and we can move on. If not, we can make an issue with the judge and I'm going to ask for attorneys' fees to come back out here and finish this and ask this.

Let's take a break.

(A recess was taken.)

Q Mr. Sagarin, would you tell me what charges were brought against you?

MR. COLEMAN: Answer that.

A Possession with intent.

Q Possession of what?

A Anabolic steroids.

Q Was that with intent to distribute?

A I was arrested for purchasing. I don't know what the exact charges were, but I was arrested while purchasing.

Q Did that go to trial or did you enter a plea agreement?

A I entered a plea agreement.

Q Did you have to pay any fine or

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restitution to anyone?

A Yes.

Q To whom?

A United States Government.

Q How much?

A 22,000 and change.

Q Did you file bankruptcy as a result of -- or have you filed bankruptcy ever?

A No.

Q Are there any ramifications out of that conviction that prevent you from owning businesses or having an ownership in any business?

A No, not that I'm aware of.

Q Did your conviction stemming from those charges play any role on Laura Fanning owning half of S&L Vitamins instead of you individually?

A No.

Q Does S&L Vitamins sell any product that's regulated by any state, local or federal agency?

A Yes.

Q What type of products are those?

A OTCs.

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Q What are OTCs?

A Over-the-counter drugs.

Q And who are they regulated by?

A I would believe they would be regulated by the FDA.

Q Does your conviction or the terms of any plea agreement you've reached affect what you can or can't do with respect to selling supplements?

In other words, are there any restrictions --

A Not that I'm aware of.

MR. MATTHEWS: Let's go off the record.

(A discussion was held off the record.)

Q I want to shift gears and talk a little bit about S&L Vitamins.

Does it do business under the name Body Source?

A Yes.

Q Why did S&L Vitamins decide to do business under that name?

A I like the name.

Q Tell me about how you first met Steve Mercadante.

A In a restaurant.

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Q He was your customer?

A Yes.

Q How did it come about that you and Mr. Mercadante decided to go into business together?

A He was a young man seeking an opportunity.

Q Were you looking for an opportunity as well?

A Always.

Q How did you two decide to sell supplements?

A At the time, it was the only thing I knew how to do besides sell drugs.

Q Is there any reason why your mother just didn't open the Lindenhurst store on her own?

A Older, tired, close to retirement.

Q I guess this was an opportunity for you or at least for your wife then to have an investment in a business?

A It was an opportunity for the family.

Q What does Mr. Mercadante do for the business?

A Day-to-day operations.

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Q What do you do for the business?
A Vendor development, product development, sales. That's it.
Q Who is responsible for the website?
A More recently, it's been myself, but both of us.
Q When you say vendor development, what do you mean by that?
A Try and find vendors to sell us products, products that we market competitively.
Q We'll look at your website in a minute, but you sell now tanning lotions and some pills and dietary supplements. What decisions do you undertake when you're looking at products to potentially sell? Is there any rhyme or reason to how you do that?
A I believe that I seek out products that I can be competitive in the marketplace that exist for the product. And if I can, I offer that product.
Q When you talk about your vendors, are your vendors, I take it for tanning lotions, different than the vendors you use for your supplements?

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A Yes.
Q What sales do you do on behalf of S&L Vitamins?
A I pick up the phone. I'll take an order, process an order. I'll help a customer out in front if they need assistance.
Q How many days a week are you at the Lindenhurst store?
A It depends what time of year it is, three. Sometimes five. Sometimes two.
Q Are there seasons where it's busy or parts of the year where it's busier where you need to be at Lindenhurst more?
A Yes.
Q When are those times?
A January to June.
Q Is that the tanning season?
A Supplement season.
Q So they coincide, the supplement season and the tanning season?
A New Year's resolutions, getting ready for summer.
Q So those would be January to June, you're there closer to 5 days per week?

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A That's correct.
Q How many hours do you suppose you work there at the Lindenhurst store?
A 20 hours, 25 a week.
Q Each when you're there 5 days a week?
A No. You asked for an average.
Q Good point. When you're there 5 days a week, are you working a full 8 hours a day?
A No.
Q How many hours do you work?
A Seven.
Q If you're only there a couple of times a week, do you spend the rest of the time at Helen Sagarin's Body Source store?
A No.
Q Do you do anything on a regular basis for Helen Sagarin's company?
A No.
Q Does she run that by herself?
A Yes.
Q Besides Mr. Mercadante and yourself, who else works at S&L Vitamins?
A Michael Nierman.
Q Other than Mr. Nierman, have there ever

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been any other employees of that company?
A Of S&L, no.
Q Has the Lindenhurst store ever been owned or controlled by a different corporate entity other than S&L Vitamins?
A No.
Q I did some. I don't think I have the document, but I looked at the Secretary of State records and I saw Body Source Limited incorporated around March 23, 1994.
I know you said you didn't know if that was the name of your mom's company, but does that sound about the same time that she incorporated her business?
A As I stated earlier in my deposition, we opened the Northport store in approximately 1994, so I would assume so, yes.
Q Is there anything that Mr. Mercadante does with respect to S&L Vitamins that you do not do?
A The books.
Q Anything else?
A Not that I'm aware of.
Q Do you review any financial statements

or financial records of S&L Vitamins?
A No.
Q Have you ever had any discussions with Mr. Mercadante about taking a distribution out the company?
A I would love for my wife to take a distribution out of the company. It's not possible right now.
Q Are you an officer of S&L Vitamins, Inc.?
A No.
Q What is Mr. Nierman's job title?
A Manager.
Q What does he do for the company?
A Everything. Packs boxes, helps customers, stocks shelves, takes out the garbage, cleans the bathroom.
Q Does he have any responsibility for ordering tanning lotions?
A Not that I'm aware of, no.
Q Does he have any responsibilities with respect to determining what to sell the tanning lotions for on the Internet?
A No.

Q Does he handle any customer complaints or customer issues?
A Absolutely.
Q Have you dealt with customers' complaints related to tanning lotions?
A Yes.
Q What type of complaints have you received?
A Incorrect items shipped.
Q Anything else?
A Not that I'm aware of.
Q Have you ever had a customer dissatisfied with the product that they received and asked for a refund?
A Not in my personal experience.
Q Has S&L Vitamins had a customer dissatisfied with a tanning lotion they received and asked for a refund?
A I don't know.
Q I'm handing you what was previously marked as Exhibit 1. This is S&L Vitamins, Inc.'s U.S. tax return for 2000.
It also includes a New York return, as well, at the end, along with a letter from the

CPA, Andrew Daniels.
Have you seen this tax return? And I'm going to focus on the federal return. Have you seen it before?
A No.
Q Were you aware that Mr. Mercadante in 2000 was listed as owning 100 percent of the stock of S&L Vitamins, Inc.?
A No.
Q After Mr. Mercadante's deposition, did he make you aware of the fact that in the year 2000, he was identified as owning 100 percent of S&L Vitamins, Inc.'s stock on the tax returns?
A I don't understand the question.
Q Did Mr. Mercadante tell you that he learned in his deposition that he was shown as a sole owner of S&L Vitamins?
A In the year 2000?
Q Yes.
A He mentioned something about it.
Q Do you know if any amended tax return for the year 2000 has been filed?
A No. No, I do not, no.
Q To your knowledge, has any amended tax

return ever been filed for the year 2000 or any subsequent year?
A I don't know.
Q If I asked you the same questions for 2001, I assume your answer would be you weren't aware that he was identified as -- Mr. Mercadante was identified as the sole owner of S&L Vitamins?
A That's correct.
Q Does that mean that if the tax returns show him, Mr. Mercadante, of being a sole owner of S&L Vitamins, that they're are not correct?
A That's correct.
Q Did Laura Fanning make her capital contribution of $15,000 upon the formation of S&L Vitamins, Inc.?
A Yes.
Q You've been handed Deposition Exhibit 3. It shows your gross sales at 2002 at $348,681. Do you see that on line 1A?
A Yes, I see that.
Q What products was S&L Vitamins selling at that time? Were they selling tanning lotions?
A No.
Q Did you provide any information to your

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accountant for any tax year for him to prepare tax returns?
A No.
Q Does Mr. Daniels prepare your individual tax returns that you filed with Laura Fanning?
A First time this year.
Q Do you recall ever having any discussions with Mr. Mercadante or Laura Fanning about needing to correctly identify her as a 50 percent owner of S&L Vitamins?
A Yes.
Q When was that?
A 2 years, approximately a year-and-a-half. I don't know.
Q How did you discover that she wasn't being shown as an owner of S&L Vitamins?
A I think the accountant brought it to Steven's attention. And, in turn, Steven brought it to my attention.
Q Do you know what, if anything, was done to correct that?
A I believe there was some paperwork that was done.
Q Do you know if it was paperwork related

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to corporate, the corporate structure or was it accounting paperwork like tax returns, if you know?
A I don't know.
Q I've handed you Exhibit 21. Have you seen Exhibit 21 before?
A No.
Q At the bottom it says, see accompanied accountant's compilation report. Have you seen that report before?
A No.
Q Mr. Mercadante identified this as the income statement for S&L Vitamins. At the bottom of the page -- well, I should clarify, the income statement and retained earnings for the period ending September 30, 2005.
Do you know when S&L Vitamins's fiscal year ends?
A No.
Q The second to last line on the bottom of this page, it says, distribution to shareholders. And it looks like $171,067.94 was distributed to shareholders. Do you see that?
A Yes.

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Q Are you aware of any distribution made by S&L Vitamins?
A No.
Q You talked to your accountant or Mr. Mercadante about distributions that appear, at least on paper to have been made, to shareholders?
A I will now.
Q For good reason. Other than you or Mr. Mercadante, would there be any other person better to answer the question as to whether distributions were made to shareholders?
A Our accountant.
Q Anyone else other than your accountant connected to the business who might have knowledge as to whether or not $171,000 distribution was made?
A No.
Q What prompted S&L Vitamins to get into the Internet business, if you will?
A Shrinking retail market, increase sales.
Q What led you to the Internet, did you research it?
A No. The Internet is a very large place

Sagarin 45

that a vast amount of shopping goes on and I wanted to get involved.
Q What year did S&L Vitamins open its Internet storefront?
A I want to say '02, I believe.
Q Did you do that yourself or did you hire someone to do it?
A Hired.
Q And who did you use?
A A company called Desktop Solutions.
Q Who did you deal with at Desktop Solutions?
A Frank Imburgio.
Q What did you ask Desktop Solutions to do?
A Build us a store for cheap.
Q At that time, you were just selling supplements?
A That's correct.
Q Did you have any discussions with him concerning making sure your website was visible to Internet browsers? In other words, ways in which you could direct Internet traffic to your website?

A Yes.
Q What discussions did you have along those lines?
A It was a long time ago, again. How do I do it? What do I need to do? I am on a budget, let's try to make this as economically feasible as possible to get my website visible to increase sales. And he thought the Yahoo store was the best to way to do that.
Q What's your understanding of the Yahoo store and how it works?
A We pay a percentage of our sales to those guys to Yahoo, meaning those guys, and as I understand it, they give preferential treatment to Yahoo stores on Yahoo shopping. That's how I understand it. It might not be true, but that's how I understand it.
Q Does Desktop Solutions maintain the website currently for S&L Vitamins?
A Define maintain.
Q Update it, make changes to it, post new items, remove old items, things of that nature?
A Part of your question is accurate. Part yes, part no. We put up new stuff, Steven and I.

And they have to do certain things that I don't know how do, HTML language.
If I were to change a header or -- there's stuff -- I can't design a website. So if I need a design change -- let me phrase it this way. If I need a design change, I can't do it. If I need a product change, I can do it.
Q Who is primarily responsible for adding and removing products on your website?
A Steven Mercadante and myself.
Q Is either one of you more responsible or the other or is it the same?
A Steven probably does it more often than I do because of his regulated hours at the business.
Q He's there on a set schedule?
A Yes.
Q Can you change your website from home, on your home computer?
A Absolutely, yes.
Q How does that work, do you just have a password and a log in and lets you get into your website to make changes and additions and subtractions?

A Yes.
Q Have you ever modified S&L Vitamins's website from your home computer?
A Yes.
Q Have you ever added pictures of products onto the -- I'm going to just limit it to tanning lotion -- tanning lotion products from your home computer onto the website?
A I'm sure I have. I'm sure I have.
Q I'm going to hand you what's been marked as Exhibit 7. And I'll represent to you that this is one of the documents that we actually attached to the complaint and used in Mr. Mercadante's deposition.
If you look at this section of your website showing Australian Gold products, when you said you couldn't like change headers, are you referring to like the top of the page where it says the THESUPPLENET.COM from Body Source, two NY locations?
A Yes.
Q What about like on the left-hand side, where it has search home, important info and it goes down a list of categories of products, can

you change that?
A I don't know. I know one time there was a problem changing it and they went over something like that. I think we can do it now because they changed it so we can change it. So I believe so now.
On the new website the BODYSOURCEONLINE.COM, which I'm sure you'll get to, we can. On THESUPPLENET.COM, I'm not sure if we can or we can't.
Q Which website was started first, THESUPPLENET.COM or BODYSOURCEONLINE.COM?
A THESUPPLENET.COM.
Q How did you come up with that name?
A Steven did. I don't like it. Now I remember, I think he said that, too.
Q Other than the Internet, do you do business anywhere else at SUPPLENET.COM or the Supple Net?
A No.
Q Does THESUPPLENET.COM website and the BODYSOURCEONLINE.COM website end up in the same place? In other words, if I type up either of those domain names, I'd get to the same website?

Sagarin 50

A Yes.
Q If you look at the first product there, it says, tan extender, if you were out and you decided you didn't want to sell that, I presume that's something you can add and remove from the pages here yourself?
A Yes.
Q Where did you get the retail prices identified here?
A Catalog.
Q Can you get a catalog?
A Our vendor.
Q Which vendor was that?
A Danny Sheehan.
Q Did you get a catalog from anyone other than Mr. Sheehan?
A I'm sure we have.
Q Do you know from whom?
A Just the vendors that I have.
Q Did they give you a new catalog as each year's products are rolled out, do you get an updated catalog with new products or --
A It comes in the box.
Q What box, the box they're shipped in?

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A Containing the tanning lotion.
Q The box from the distributor or the box from like Mr. Sheehan?
A I don't understand.
Q You said it comes in the box. Who puts what in the box?
A I place an order with Danny. Danny places an order with whoever he places an order with. I go pick up the order.
If I happen to open the box up and there's a catalog in there, so I would assume the distributor put it in the box.
Q Did you take the photographs shown here in Exhibit 7?
A No.
Q Did you have someone take the photographs in Exhibit 7 for you?
A Yes.
Q What's the name of the photographer?
A Helen Sagarin.
Q Who?
A Helen Sagarin.
Q Did you keep it a secret that Helen Sagarin took pictures of these products?

Sagarin 52

A No.
Q Did you ever use a professional photographer?
A My sister, Elizabeth Sagarin.
Q Were they paid for this work?
A Yes.
Q After they took these photographs, did they doing anything else with the raw photographs, as far as -- and I'm talking about Exhibit 7 only here, did they do anything else with the photographs other than give them to you?
A No. E-mailed them to us.
Q Who decided how the products should be displayed in these photographs?
A I did.
Q Why are some products shown with the box and some aren't?
A Because I believe I looked at the Australian Gold website and saw how they displayed and that's how we displayed them, like they displayed them.
Q Are you pretty familiar with the Internet?
A Define familiar. I don't know.

Sagarin 53

Q I mean, do you know how to get on it and search and browse and do things of that nature?
A Absolutely, yes.
Q And did you ever right click over a photograph and cut or copy it?
A As embarrassing as this sounds, I only learned how do that, like 18 months ago, what the right side of the mouse does.
Q Did you ever do that with any other Australian Gold, Swedish Beauty or Caribbean Gold product?
A No.
Q If you look at Blazen' on that left column, third one down, there appears to be something superimposed over the product. Do you know what that says?
A No.
Q Do you know who put that there?
A It had to be the photographer.
MR. COLEMAN: I just object to the form because I don't see anything -- you see something sticking out of the top?
MR. MATTHEWS: Yes.
THE WITNESS: You're talking about that

Sagarin 54

little blurb, whatever that is?
MR. COLEMAN: To me, looking at the picture, I can't agree that anything is necessarily superimposed.
MR. MATTHEWS: Wait, don't testify for him, Ron.
MR. COLEMAN: Because on the raw transcript, it's going to look like there's been an acknowledgement of some kind of superimposition. All I see is a smudge.
MR. MATTHEWS: All right.
Q I'll represent to you this website page was pulled from the Internet on April 19, 2004.
A Okay.
Q At that time, were you the one that put these photographs on the website or did someone else do it?
A Either Steven or myself.
Q Has anyone other than Steven or yourself ever put photographs Australian Gold, Swedish Beauty or Caribbean Gold products on your websites?
A No.
Q If you look at the last page, 3 of 3.

Sagarin 55

Why are the SPF products grouped in threes?
A I don't know.
Q Is it your testimony, though, that you would have made the decision how the products are displayed on this photograph?
A Yes. I would approve it. That looks nice, that's fine.
Q At the bottom of the page, it says, Body Source, and it lists your 308 Montauk Highway address and it also has Helen Sagarin's address listed in Miller Place, correct?
A Yes.
Q Why are both locations listed there?
A For convenience of the customer, retail customer.
Q So the retail customer could then go into Helen Sagarin's place of business in Miller Place and purchase these Australian Gold products if they're shown here in Exhibit 7?
A Possibly. She wouldn't stock them, but if the customer wanted to place an oral order, I could fill that order by taking the products from S&L, appropriating them to Body Source in Miller Place and selling them to the customer, yes.

Sagarin 56

Q The first page, the phone number (631) 225-BODY, at what location does that number ring?
A Montauk Highway, Lindenhurst, New York.
Q How do you determine what price you'll sell these products for?
A I just go, these are nice prices, too. I wish I was selling this stuff for these prices now. Competition.
Q Who is your competition?
A AMAZON.COM, Ebay, Best Indoor Lotion, Tan Today, Best Price Lotion, World Class Nutrition. Oh, God, there's so many more, Cheap Lotions.
Q But generally, the websites are your competitors?
A Generally, yes.
Q Does Helen Sagarin pay any fees to S&L Vitamins for being associated with S&L Vitamins's web?
A No.
Q Does Helen Sagarin's Body Source pay any fees associated with maintaining the website?
A I don't understand.
Q Don't you have like a monthly service

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charge for maintaining your website or hosting, having someone host the website?
A Yes, Yahoo.
Q Does she pay any fees for Yahoo?
A No.
Q Let's look at the Golden Glaze product. It says, retail $60, your price $39. That's on the left-hand column?
A Okay.
Q Second from the bottom, tell me how you arrive at your price. What's your markup and all that?
A Markup or markdown? Which one would you like to know?
Q What's the difference?
A How I discount to the customer, a markup is what I make on the product.
Q I want to know what you make on the product first.
A 40 percent, excuse me. Based on that, doing quick math in my head, I should make approximately 40 percent based on that price. Maybe a little more, 45.
Q How do you mark down to the customer?

A Based on competitor's prices. Try to be competitive with the other people out there.
Q So you'll do your markup, and you'll want to try to get your 40 percent margin and if it's higher than a competitor's you may mark it down to compete?
A It's retail. Be it Internet, be it walk-in, that is retail.
Q Who does S&L Vitamins buy its tanning lotions from?
A Dominic, Danny, John, Joe.
Q Just so I have a good record, Danny Sheehan?
A I'm sorry, I just wanted to be cute. Danny Sheehan, John Tufarella and Joe Ferrara.
MR. MATTHEWS: Let's take a break.
(A recess was taken.)
Q Have you bought any brand of tanning lotions from anyone other than the four individuals you just identified?
A Yes.
Q Who else?
A Direct manufacturers. Would you like me to list the manufacturers for you?

Q Yes.
A Hoss Hauce, Vegas Tan, Millennium Tan, Performance Brands, which represents five or six -- four or five different types of locations.
Q Are they a distributor?
A No, they're a manufacturer.
Q But they manufacture four or five --
A They manufacture Fiesta Sun, Pro Tan, EXP Spray Tan Systems, Ultimate Tanning, Mist Sun Care, I think. I think so.
Q That's a fair representation, do any of these manufacturers object to you selling the products on the Internet?
A No.
Q Do you tell them that you're selling the products on the Internet?
A Yes.
Q Do they ask?
A If they do, I tell them.
Q But to your knowledge, none of these direct manufacturers you listed have objected to you selling the products on the Internet?
A They are more than happy to get an order.

Q What products do you buy from Dominic, Joe, Danny and John?
A Joe is the SPF line, the spray.
Q Outdoor products primarily?
A Correct. And the other three, I'll represent, Dominic, Danny, John are the indoor line and a little bit of the outdoor line lotion.
Q I assume that the four specific individuals don't supply you products that you can obtain directly from the manufacturer; is that correct?
A That is correct.
Q What brands do they supply Australian Gold, for example, Australian Gold, Designer Skin, whatever they might be?
A Australian Gold, Designer Skin, Supre, that's pretty much it.
Q Did they supply you California Tan in the past?
A In the past.
Q Is there a reason that you use those four individuals to obtain Australian Gold, Designer Skin, Supre and California Tan because manufacturers would not sell to you directly if

you were selling on the Internet?
A Absolutely, yes.
Q Is it your understanding that all of those manufacturers I just listed have prohibitions against sales or have policies against sales on the Internet?
A Can you list the manufacturers?
Q Sure. Designer Skin, Supre, Australian Gold, California Tan?
A I'm aware they do have policies, yes.
Q Do you use one supplier more than the other?
A I have a soft spot in my heart for Danny Sheehan.
Q Why is that?
A I've known him for a long time.
Q I assume you guys were friends before you --
A Yes.
Q -- went into business together?
A Yes.
Q Or do business together?
A Correct, right. I understand.
Q How did you and Mr. Sheehan hook up for

Sagarin 62

the sale of tanning lotions by him to you?
A I was a customer of his tanning salon. I tan there, which I don't tan anymore. I sold him supplements, which he had on his shelf.
And we were bartering supplements. He couldn't pay a bill or I forgot what happened, an invoice or something. And he bartered the tanning lotion for the supplements and that's how it began.
Q Was that barter for your own personal use or the business for S&L Vitamins?
A I don't use tanning lotion.
Q So it was for the business of S&L Vitamins?
A Yes.
Q What led you to believe that selling tanning lotions might be a good idea?
A A lot of tanning salons out there.
Q It doesn't mean you make any money?
A Give it a try.
Q Was your intent to sell it in your retail location?
A My intent was to sell it.
Q Did you take that first exchange of

Sagarin 63

product with the intent of placing it on the Internet?
A I don't know. Probably, yes.
Q Did that happen right away that the products you obtained from Mr. Sheehan went on the Internet right away?
A Most likely, yes.
Q I mean, other than just like try it. It seems like a good thing, did you give any thought like this might be another line where we can add revenues or this might be a good seller on the Internet?
A No.
Q So you just tried it and obviously it worked well?
A It works okay. I mean, I don't want to be here, but yes. Sales are good.
Q What was the time of that first transaction between you and Mr. Sheehan, do you remember?
A End of '03.
Q At some point in time, Mr. Sheehan actually didn't require as much supplements as you did tanning lotion; is that correct?

Sagarin 64

A Correct.
Q How did the transactions take place then when you weren't trading product?
A I would pay for it with check. Whatever the difference was, which was substantially usually.
Q Back at the end of '03, beginning of '04 when you were just getting into the tanning lotion business, how frequently were you placing orders from Mr. Sheehan?
A If my memory serves me right, once or twice a week. I don't know. I don't know.
Q Do you remember how many bottles or cases of product you typically ordered?
A No. 400 bottles, 200 bottles, 500 bottles. I don't know.
Q Enough to fit in the trunk of your car?
A Sometimes. Truck, I drive a GMC. But sometimes. Sometimes it wouldn't. Sometimes it was 800 bottles.
Q How much is 800 bottles? Is that like a pallet full?
A Half the table and about 4 feet high.
Q 8, 10 feet long and 4 feet high maybe?

Sagarin 65

A Yes, probably something like that. 60 cases, I don't know.
Q How much would an order like that typically cost?
A 8 grand, 7 grand, 6 grand, 5 grand, depending on what you're ordering. Obviously, some prices are higher than others.
Q Right. What percentage of S&L Vitamins's orders are placed through Mr. Sheehan as opposed to others?
A 80 percent. 75, 80, a lot, a good chunk.
Q Well you explained for Plaza, but with respect to John Tufarella and Dominic Bartone, why do you use them?
A I like Danny.
Q I understand you like Danny, but why even bother with Dominic Bartone or John Tufarella?
A Never put all your eggs in one basket, that's the first rule in retail. Always find another source, second rule of retail, which is the same as the first.
Q You're looking for additional sources

Sagarin 66

now?
A Not now, Monday.
Q What is Monday?
A I don't know. I just feel like doing it on Monday.
Q Well, you're obviously not doing it now because we're sitting here talking?
A Right.
Q Have you been in any contact with any distributors to purchase lotions directly from distributors?
A No.
Q Why not?
A The first lines I carried were Australian Gold, the products. A couple of weeks later, your letter shows up from Ice Miller. I didn't know what I was doing. I had no idea.
Like I said, it was a try. And I realize that oh, my God, what am I doing here, so I just ordered from Danny. And presumably, you told me that, I didn't feel I was doing anything wrong because I wasn't buying from distributors, so I didn't change it. I left it alone.
Q So you thought, since I'm not buying

Sagarin 67

from a distributor, I'm going to stay with Danny Sheehan because he's not a distributor?
A He's not a distributor.
Q Did you have conversations with Danny about that, about the letter we sent and --
A Yes.
Q What were those conversations?
A I got a letter saying, please don't sell, not please --
Q We might have said, please.
MR. COLEMAN: There might have been please somewhere in that letter, it's possible.
A We got a letter stating that we don't want you selling Australian Gold on the Internet. And I scratched my head and I thought about it, conferred with counsel and we continued it.
Q Did you show Danny Sheehan a copy of the letter you received from Ice Miller?
A No.
Q But you told him about the substance of that letter?
A Exactly the way I think I told you. I know there was a conversation, but it was a long

Sagarin 68

time ago.
Q What did Mr. Sheehan say, if anything, in response to you?
A Not much. Danny --
Q You're smiling. He said something?
A Danny just kind of walks around. He's a big guy. He just shrugs his shoulders. That's Danny. Not too much.
Q Did he ever say, oh, I better not sell these products to you?
A Never.
Q Did he say he would continue on sell these products to you?
A I don't know if he said, but he continued to sell products to me.
Q Did you and Danny have discussions about you better be quiet about who you are or how I'm getting these products?
A No.
Q Did you ever tell Danny Sheehan not to tell anyone else that he was selling you tanning lotions?
A Not at all.
Q What about the other suppliers, did you

Sagarin 69

ever tell any of the other suppliers, not to tell anyone else that they were selling you tanning lotions?
A No.
Q So that wasn't secret?
A It shouldn't be.
Q You mentioned earlier in your deposition about tight margins and competition.
A Not tight margins, but competition.
Q Competition, yes. But my understanding is you're paying a 10 to 20 percent premium on any invoice that Sheehan receives for products that he orders for you, correct?
A Sheehan, Dominic, John, Joe.
Q Pretty much works all the same for all four distributors?
A Yes, vendors.
Q Have you explored any ways in which to try to reduce or eliminate that 10 to 20 percent markup that Mr. Sheehan is getting?
A Beg. No.
Q Nothing else other than --
A No.
Q Tell me how you placed an order.

Sagarin 70

A To who?
Q Well, let's start with Danny and to the extent we they're different for other people, we'll clarify that, but let's start with Danny Sheehan.
A Pick up the phone, look at the shelf, look in the back, because occasionally there were have back orders.
Q Just call him up and tell him over the phone what you need, right?
A Yes.
Q How long did it take Mr. Sheehan to get your product?
A 1, 2, 3, 4 days.
Q That's a pretty quick turnaround, isn't it?
A One, two is. Three or four isn't.
Q Is your business model design so you don't keep a lot of inventory on hand?
A Less inventory is more profit.
Q For example, do you try to keep enough inventory at hand to anticipate what your orders for the week will be or do you wait until you get an order and say, I'd better call Danny up and

Sagarin 71

get some product in overnight?
A It depends on the time of the year. In the busy time, we try to anticipate every couple of days, if we can. It's busy right now.
Q How much business are you doing right now?
A I don't know. Today, I don't know.
Q I mean, just generally. You said it's a busy time, sales have been good. What have your sales for distributor tanning lotions been --
A I couldn't tell you off the top of my head. I don't know.
Q Are they $500,000?
A For '06 -- oh, God, no.
Q A couple hundred thousand?
A Maybe.
Q Does that include all tanning lotions or --
A Yes. Yes.
Q Is Australian Gold your number 1 seller?
A Yes.
Q What percentage of sales would you say are Australian Gold?
A In the scheme of supplements and --

Sagarin 72

Q No, just in tanning lotions?
A Tanning lotions, it's a good product. 20, 30, 40. 20, 30, I don't know. It's good though.
Q What is your next big seller?
A Brand-wise?
Q Yes.
A Designer Skin.
Q And then after Designer Skin?
A Swedish Beauty.
Q What percentage of your sales are Designer Skin and Swedish Beauty?
A Oh, God, tanning lotion, 10s, a couple of 10s, pair of 10s.
Q So they're pretty equal, Designer Skin and Swedish Beauty?
A Yes. That's fair, definitely fair.
Q What percentage of your revenues are attributed to tanning lotion sales overall?
A 30.
Q So 70 percent of your revenue comes from supplements?
A Yes. I think. I guess. I'm trying to be as clear as I can.

Sagarin 73

Q I understand. And this isn't a memory test, but I think you generally have your finger on the pulse of the business, so you can give me a feel.
I asked about -- Mr. Mercadante talked about revenues increasing the first year your website was operational substantially. I think your revenues went into seven figures.
Do you sell most of your supplements over the Internet, as well?
A Probably half and half. Yes. That's true. Yes, definitely, on the Internet.
Q If the court ordered you or one day you woke up and you decided you didn't want to sell Australian Gold, Swedish Beauty products on your website, would that cause you to go out of business?
A No. Losing this lawsuit would, when you get into damages and stuff like that.
Q After you placed the order, how did you know the tanning lotions were ready?
A Danny would either -- we're speaking of Danny now?
Q Danny.

Sagarin 74

A Phone call from either the store or he'd call my cell phone, come pick it up. Danny's store is on my way from home. I live pretty far from work, about an hour and 15 minutes.
Q So you pick it up in your Yukon?
A Sometimes.
Q Would the boxes still be sealed from the distributor?
A Yes, most of the time. Depending on whether or not Danny needed any for his own personal stock, his stock for the store.
Q But most of the time, you just pick up the boxes and drive off and take those boxes to your place of business?
A Yes.
MR. COLEMAN: Larry, try to answer verbally and also wait until the question is completely finished.
MR. MATTHEWS: He knows where I'm going. We're on the same page, Ron.
MR. COLEMAN: We all know where you're going.
A I want to go home.
Q Me, too. I want to go home, too. But

Sagarin 75

did Danny Sheehan give you an invoice as well?
A There was either an invoice in the box or Danny would hand it to me, yes.
Q Once you get the product back to your Lindenhurst store, what did you do?
A Checked it against the invoice that either Danny handed me or it was in the box.
Q What did you do with the invoice?
A Enclosed a check back to Danny Sheehan, mailed it back to him.
Q Mailed the invoice back?
A Absolutely.
Q Did you keep a copy of the invoice for your records?
A No.
Q How did that process work or differ with respect to the other three -- let's leave Plaza out of this.
With John Tufarella and Dominic Bartone, did this process that you just described differ at all?
A With Dominic, slightly.
Q How so?
A Faxed it.

Sagarin 76

Q You faxed him an order?
A Correct. Printed out an order sheet. Not an order sheet, printed out the actual product lists on the page of our website and just hit print, out comes the stuff.
We would write the quantities next to the items that we intended to order with an arrow pointed to the product, so that there was no discrepancy on what we were ordering.
Q You're not talking about what you printed out was like Exhibit 7?
A Similar.
Q It is?
A Absolutely.
Q So if you wanted to order Golden Glaze, you'd write 6 and draw an arrow to it?
A Yes.
Q With respect to picking up the product from Dominic Bartone, did that vary at all from what you described with Danny Sheehan?
A No.
Q Did Mr. Bartone supply you with an invoice from the distributor?
A The same way Danny Sheehan supplied me

Sagarin 77

with the invoice, yes.
Q And the invoice and the payment was returned after you checked it in?
A With Dominic, I usually paid before I picked it up. With Danny, I would take it back to Montauk Highway.
Q Any reason for that distinction in the timing?
A Better friends with Danny.
Q I understand. John Tufarella, was the procedure the same as Danny or did it vary in any way?
A Very similar to the way it worked with Danny. Most the time I would pick it up at the Greenvale location.
Occasionally, if John -- Greenvale is a far distance from everywhere. It's north fork Long Island. I mean, north. It's very far, difficult to get to.
Occasionally, John would deliver it and we'd pay John right on the spot for delivery or the same situation as Danny.
Q Anything else vary in your dealings with John Tufarella other than what you've just

described?
A We stopped ordering from him.
Q Why is that?
A Store went out of business and he's pursuing other things. I tried to make it easy to order products. I just try to make it easy. He's a nice guy. There's no question about it and he is a nice guy.
Q There are more Yuca tanning salons than there are Body Sources, but is he still working with -- and I'm looking through my notes -- I think it's the Syosset store. Is John Tufarella still involved in the Syosset store?
A I don't know.
Q But you're not ordering from the Syosset store?
A No.
Q Plaza is probably a little bit different because of the types of products you ordered, so tell me how the transactions with Plaza Sports worked.
A Similar to Danny. I can't get the SPFs right now. I can't get them. So I placed an order with Joe and call me when it came in,

picked it up, paid him the check.
Q How did you know Joe?
A Joe is a customer at the Miller Place location and I also work out with him at the gym, a place called Personal Fitness. His brother is also a professional hockey player for the Twins. He played for the Rangers. He used to play for the Rangers.
Q When you say you can't get the SPFs anymore, what do you mean by that, will Plaza not sell them or they don't have them?
A They don't have them. It's seasonal. Our inventory is running extremely low. We only have a few different bottles left. Whatever we ordered from them, that's it.
Q And the tanning salons from which you buy the products, they can't get the SPFs from their distributors?
A No.
Q Or at least a complete line of SPFs?
A It's a restricted line. I'm not familiar with the policies.
Q In the orders you placed, have you ever had a situation where you've been shorted in an

order?
A Yes.
Q How was that handled? Is that through the tanning salon from which you purchased the products?
A Yes.
Q Have you ever had any communications with distributors that supply the products for the tanning salons?
A No.
Q Have you ever attempted to place an order directly with a distributor?
A No.
Q When did you tell Danny Sheehan, if at all, you were selling products on the Internet, was that with that letter?
A No. It was probably prior to that, but I don't remember specific date or conversation that occurred. Danny knew I was selling it on the Internet.
Q That wasn't a secret?
A No secrets.
Q In relation to when you first started selling tanning lotions on the Internet and

received the Ice Miller letter, do you know how long a period of time that was?
A What's the date of the Ice Miller letter?
Q That's a fair question.
A The first Ice Miller letter.
Q January 15, 2004.
A 2 months.
Q We talked a little bit before our break about the fact that Helen Sagarin's store is listed on the Internet website.
If a customer goes into Helen Sagarin's store and says, hey, I saw you carry Australian Gold products. I want to buy a bottle of Blazen' or something. She doesn't have it on her shelf.
Does S&L Vitamins actually sell her a bottle of that location?
A If there's not an outstanding balance for supplements. Her store carries a lot more variety of supplements than we do it. Usually there's an outstanding balance higher than what we owe her because of the -- it's a very busy store.
Q She is a major source for you to obtain

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supplements?
A Sometimes. Her variety is a lot better than ours. And if there was an outstanding balance, we needed to cut her a check. It hardly ever happens.
Q Do you order your supplements through Helen Sagarin's store?
A Primarily, most of the sales are through supplement vendors. Yes, direct distributors, direct manufacturers and distributors.
Q Do any your direct manufacturers or distributors for supplements also offer tanning lotions?
A No. They do offer a Pro Tan for competition body builders, it's like an instant tan.
Q None of the tanning lotions, not Australian Gold, Swedish Beauty, those?
A No.
Q What was the date of your last order from Danny Sheehan?
A March 29.
Q Yesterday?
A Yes.

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Q How big was that order?
A 5 grand, $5,000.
Q We're in the busy season now, correct?
A Almost.
Q Spring break time, March, April?
A Yes.
Q Are those the biggest months, March and April?
A April would be the busy month of the year, I believe, in my experience, in the tanning lotion industry.
Q How frequently are you placing orders now with Mr. Sheehan and your other suppliers?
A Every other day.
Q Is 5 grand a large, small or about average?
A It's large. Yes, it's a good-size order, but it's average. It's average. I can only stock so much. My store very small.
Q Why did you decide to loan Mr. Sheehan $7,500?
A To pay his attorney.
Q Why did you decide to do that?
A I like Danny.

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Q Were you concerned that if you didn't pay his attorney, he might not be able to continue to sell the products to you?
A No.
Q Is that a loan or was that a gift?
A It's a loan.
Q How is it being repaid?
A Discount on the inventory that we pick up from him, 10 percent versus 20 percent. 10 percent credit goes towards his bill and 10 percent goes directly to his pocket.
Q Have you ever made any purchase of Australian Gold, Swedish Beauty, or Caribbean Gold tanning lotion and paid for it other than by a check?
A No.
Q When is the last time you placed an order with John Tufarella?
A A couple of years, year and a half.
Q That's just because his Greenvale store closed?
A His Greenvale store closed, he drives a Boars Head truck part time, he went for the court officer's test. He's a busy guy. He's difficult

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to get a hold of.
Q What about Dominic Bartone, what's the last order you placed with Dominic?
A Last week.
Q Right now, how many orders a month are you placing with Dominic?
A I try to give him one a week, 10 days. I don't know right now.
Q What was the amount of the last order?
A $4,000, I believe. $4,200, $4,200.
Q You try to keep that relationship good by giving him some business every once in awhile?
A Absolutely, yes.
Q Dominic Bartone does know that you're selling the products on the Internet, too?
A Yes.
Q Was that disclosed to him upfront, what you were doing with that? Did you call him and say, hey, I'm going to sell some products on the Internet, can you help me get them?
A I called him up and asked him if he'd like to sell me tanning lotions because he owned a tanning salon and he said, yes.
Q Do you remember approximately when that

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was in relation to your first transaction with Danny Sheehan?
A I think it was '04. I think it was in the beginning, during the busy season because I didn't know what the busy season was, as far as tanning. I didn't know it existed. And the orders increased, time to get another vendor.
Q What about John Tufarella, when did you first place an order with him?
A Probably '04.
Q And you'd known Dominic Bartone prior to calling him up, correct?
A Yes.
Q How did you know Dominic?
A Mutual friend.
Q Who is that mutual friend?
A Robert Russo.
Q Were you introduced to John Tufarella through Danny?
A Yes. I think so. He's a Smithtown boy, so that's where we're from.
Q Mr. Sagarin, you've been handed Exhibit 18, which is the lawsuit, complaint, that your counsel filed on behalf of S&L Vitamins against

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Australian Gold, Inc.
Did you authorize Mr. Coleman to file this lawsuit on your behalf?
A To file the complaint, yes.
Q What led you to the decision to sue Australian Gold?
A After receiving threats from, and they were threats from your office, Ice Miller, speaking, I was scared, intimidated by a much larger company coming after us.
I felt the only financial recourse that I had was to stay in my own area. And the only way I can do that after conferring with counsel is counsel told me you need to act first --
Q I don't want to know what your counsel told you.
A All right. But I was extremely intimidated and I didn't know what to do because I never experienced anything like it.
Q I want to ask you a couple of questions about some of the documents in here. It's actually paragraph 51 on page 11. It says, plaintiff has suffered and will continue to suffer economic harm from defendant's actions.

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What type of economic harm has S&L Vitamins sustained as a result of Australian Gold's actions?
A Inability to expand product lines. Inability to buy supplements at correct pricing structures due to the fact that we can't afford to lay out the demands put out by the manufacturers and distributors.
Obviously, attorneys' fees. Mostly the fact that I can't bring in new products. I can't afford it. I lost revenue from that. I lost revenue from new business.
And all the business that that would generate from the new customers that I received from generating new product lines, going into a new direction completely with the whole website. That's what I want to do. I can't afford to do it.
Q Let's break this up and they may overlap. You're talking about your inability to offer now product lines. What new products are you talking about?
A I had a deal cut with Everlast to be one of their exclusive distributors besides

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themselves and their initial stock order was way too great for me to put up. I couldn't do it. I had to walk away from the business. Also --
Q Let's start with Everlast here. You're talking about the company that makes the boxing gloves?
A Correct.
Q What else do they make?
A They don't make tanning lotion. Boxing glove rings, gloves, bags, fitness equipment, clothes, hats, shirts, novelty items, like posters and promotional items. I couldn't do it. I wanted to.
Q What kind of financial commitment did they want from you?
A $30,000 upfront order.
Q You ordered the products from them and they're going to let you sell it on the Internet?
A Correct. And in order to do that, I would also have to move my current location from 308 East Montauk Highway to accommodate the equipment, I can't afford to do that.
Q Who did you negotiate with at Everlast regarding this?

A I don't know. I have his card in my office. If you need it, I'll be more than happy to give it to you.
Q When did those negotiations take place?
A A year ago, 8 months ago, at a boxing match that I was at.
Q When would that have been?
A August. I was introduced to him by my boxing trainer.
Q Is that deal over now?
A It's sleeping.
Q Has it been lost for good?
A I hope not. It's lost for now.
Q Do you think that deal with Everlast would be bigger than the tanning lotion portion of your business?
A You'll never know. Not today, anyway.
Q But based upon what you were anticipating, was it your anticipation that that was going to be a major part of your business other than tanning lotions?
A I'm always looking for an opportunity, if I can purchase a product at a fair price and offer it to the customer at a fair price, I

really don't mind what the product is.
Sports enthusiasts, that's our motif, but people who take care of themselves. So if it's hair care products or Everlast products or fitness wear, or whatever it is, I'm always looking for the opportunity.
I have been completely financially strapped because of that lawsuit and I can't afford to take on any product lines unless the commitment is like $200 or $500, realistically.
Q Any other product lines that you were planning to do that you consider to be economic harm that you suffered as a result of defendant's actions?
A EAS, which is Experimental Applied Sciences, has a minimum requirement, purchase requirement. I lost that. It's gone. I don't have it anymore.
Q What does EAS manufacturer?
A Myoplex, probably the most popular meal replacement product in the world. I was direct with them for 14 years. I know Bill Phillips on a first-name basis.
Q Who is that?

A He was a CEO of the corporation. He's now called Body for Life. I lost my direct status with them because of the volume, my decrease in volume.
Q What volume of sales would you have to order?
A 10,000 a month.
Q 10,000 a month?
A Yes. To get a certain discount and now I'm buying the stuff secondhand or through a distributor. I can't be competitive in the marketplace, so I lost that customer because of that. I'm able to buy directly, is what it comes down to.
Q All right. Let me stop you there.
A If you can't buy directly, you can't sell directly.
Q So I take it, your sales of EAS products have been less than $10,000 per month; is that correct?
A Significantly, yes.
Q How has Australian Gold caused your sales of EAS products to dip below $10,000 per month?

A Because due to this lawsuit, instead of paying the EAS man, I have to pay the lawyer and I'm unable to purchase the product at a competitive price.
Q So you're not offering it for the same price ---
A I can't. My competitors can, but I couldn't.
Q So is it your testimony that the EAS products, you need to have that in stock and then hope you sell it, you sell your inventory rather than the manner in which you purchase the tanning lotions, which is kind of just in time?
A No. It's a commodity, similar to the tanning lotions, it moves very quickly if I had it competitively priced. I cannot competitively price the product.
Q When did you lose your direct distributorship?
A Middle of last summer. End of the summer.
Q Anything else related to your business where you suffered economic harm?
A I can't buy anything directly anymore.